



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.20862 of 2017
and
W.M.P. (MD)No.17150 of 2017

M/s.Kasim Hotels Private Limited,
Rep. by its Managing Director,
M.Kasim

: Petitioner

-Vs-

The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order made by the Respondent in his proceedings in Se.Mu.Ka.No.45/2017/U, dated 06.11.2017 and quash the same as illegal.

For Petitioner	: Mr.M.Mahaboob Athiff, For M/s.Ajmal Associates
For Respondent	: Mr.T.R.Janarthanan, Additional Government Pleader

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

Mr.T.R.Janarthanan, Learned Additional Government Pleader, takes notice for the Respondent.

2. Heard both sides. No counter is filed on behalf of the Respondent.
<https://hcservices.ecourts.gov.in/hcservices/>



3. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

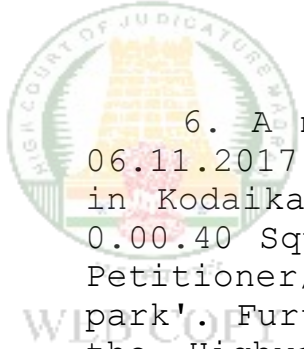
4. The main grievance of the Petitioner is that the Respondent had issued a proceedings dated 06.11.2017, whereby and whereunder, the Petitioner was directed to remove the encroachment, within seven days from the date of receipt of the communication. Also, the Petitioner was informed that if the encroachment was not removed within seven days, the same would be removed and the expenses incurred thereto would be recovered from the Petitioner.

5. It transpires that on earlier occasion, the Petitioner filed a Writ Petition in W.P.(MD)No.20238 of 2017 against the District Collector, Dindigul District and the Assistant Divisional Engineer, State Highways Department, Kodaikanal, Dindigul District and this Court, on 02.11.2017, at Paragraph Nos.22 and 23, had observed the following:

"22. Considering the fact that the Tamil Nadu Highways Act, 2001, is quite applicable to the Petitioner, this Court quashes the impugned notice/order dated 25.10.2017 issued by the Second Respondent under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 and directs the Second Respondent to issue a fresh show-cause notice to the Petitioner by strictly adhering to the relevant provisions of the Tamil Nadu Highways Act, 2001. After issuance of such show-cause notice to the Petitioner specifying the time limit of seven days as per Section 28(2) of the Tamil Nadu Highways Act, 2001, the Petitioner shall submit his Remarks/Objections. Thereafter the concerned Authority viz., the Second Respondent herein shall pass necessary orders within a period of four weeks thereafter, of course, on merits after adhering to the principles of natural justice, in accordance with Law.

23. It is open to the Petitioner to raise all factual and legal pleas before the concerned Authority, who shall take note of the same and also advert to the same, thereby meeting out all the factual and legal points raised by the Petitioner and to arrive at a decision in the subject matter in issue by applying his thinking judicial mind in a Fair, Free, Just, Impartial, Unbiased and Dispassionate manner. It is open to the Second respondent to issue notice to the Authorities concerned also if need be and if situation so warrants."

and allowed the Writ Petition without costs.



6. A mere glance of the Proceedings of the Respondent dated 06.11.2017 addressed to the Petitioner/Restaurant indicates that in Kodaikanal Town, in respect of Survey No.D-3-3, an extent of 0.00.40 Square Metre was said to have been encroached upon by the Petitioner/Restaurant and the encroachment is by way of 'car park'. Further, the notice had mentioned that the encroachments on the Highways poramboke were to be removed as per G.O.No.540 (Revenue Department) dated 04.12.2014. In fact, the Petitioner was required to remove the encroachment in question within seven days from the date of receipt of notice as per Section 28(1) and (2) of the Tamil Nadu Highways Act, 2001, etc.

7. Although the Petitioner has a remedy of addressing a representation within the time limit in terms of Section 28(2) of the Tamil Nadu Highways Act, 2001, in the instant case on hand, admittedly, the Petitioner had not made any representation to the Respondent explaining his stance in regard to the purported unauthorized encroachment. To put it precisely, Section 28 of the Tamil Nadu Highways Act, 2001, runs as under:

"28. Prevention of encroachment.- (1) The Highways Authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways Authority or any person authorised by it in this behalf, may-

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."



8. It is to be borne in mind that the procedure to be followed by the Highways Authority in enquiry into claim has been prescribed in Rule 11 of the Tamil Nadu Highways Rules, 2003. Apart from that, as per Rule 12 of the Tamil Nadu Highways Rules, 2003, an Appeal against any decision or order of the Highways Authority (Divisional Engineers of respective Divisions) made under Section 32 shall be preferred to the State Highways Authority [Chief Engineer (General)] within thirty days from the date of receipt of the decision or order.

9. Be that as it may, the impugned order dated 06.11.2017 passed by the Respondent straightaway requires the Petitioner to remove the encroachment in question within seven days from the date of receipt of communication. Since an opportunity has not been provided to the Petitioner by way of the impugned proceedings dated 06.11.2017 of the Respondent, this Court, after bearing in mind the earlier order passed on 02.11.2017 in W.P.(MD)No.20238 of 2017 and also taking note of the facts and circumstances of the instant case, in an integral manner, in the interest of justice, directs that the impugned proceedings dated 06.11.2017 can be treated as a notice by the Petitioner and for this notice, the Petitioner is directed to offer/submit his explanation within a period of two weeks from the date of receipt of copy of this order. It is open to the Petitioner to raise all factual and legal pleas before the Respondent. Thereafter, the Respondent is directed to pass a reasoned speaking order on merits in the subject matter in issue, within a period of four weeks and further, the Respondent shall pass orders adverting to the factual and legal pleas raised by the Petitioner, by meeting out the same. The Respondent shall provide adequate opportunity to the Petitioner by adhering to the Principles of Natural Justice. It is open to the Respondent to issue notice to the Petitioner (if need be/if situation so warrants) and also if there are other persons concerned in the subject matter in issue, issuance of notice to them may also be considered by the Respondent, as he deems fit and proper, based on the facts and circumstances of the present case, which floats on the surface.

10. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/



To

The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

+1cc to M/s.Ajmal Associates, Sr.No.86978

SML

VB/SKN/RSK/SAR2/15/11/2017/5P/3C

**Order made in
W.P. (MD) No.20862 of 2017
Dated: 14.11.2017**